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Filing date: **12/26/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|---|
| Proceeding | 91208003 |
| Party | Defendant Michael F. Ball |
| Correspondence Address | CASIMIR W. COOK II ROYLANCE, ABRAMS, BERDO & GOODMAN, LLP 1300 19TH ST NW STE 600 WASHINGTON, DC 20036-1649 CWCdocketing@roylance.com |
| Submission | Answer |
| Filer's Name | Casimir Cook |
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| Signature | /Casimir Cook/ |
| Date | 12/26/2012 |
| Attachments | 60080 - Answer and Affirmative Defenses - 12 26 12.pdf (5 pages)(43846 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| <p>RED BULL GMBH,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">v.</p> <p>MICHAEL F. BALL,</p> <p style="text-align: center;">Applicant.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Opposition No. 91208003</p> |
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APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES

Michael F. Ball (“Applicant”) hereby answers the Notice of Opposition in the above-identified proceeding as follows:

Applicant denies that Red Bull GmbH (“Opposer”) will be damaged by the registration of its marks +RED DETOX ELIXIR, +RED DREAM ELIXIR, +RED SUN REPAIR ELIXIR, and +RED RESCUE ELIXIR shown in its U.S. Trademark Applications Serial Nos. 85/400,933, 85/400,941, 85/400,955 and 85/406,652 and answers the numbered paragraphs of the Notice of Opposition as set forth below:

1. Applicant admits that Opposer is engaged in the energy drink industry. Applicant lacks knowledge or information sufficient to form as to the truth of the remaining allegations in numbered paragraph 1 of the Notice of Opposition and therefore denies same.

2. Applicant admits that Opposer claims ownership of the corporate name, trade name and trademark RED BULL. Applicant lacks knowledge or information sufficient to form as to the truth of the remaining allegations in numbered paragraph 2 of the Notice of Opposition and therefore denies same.

3. Applicant admits that Opposer claims ownership of the trademark RED BULL. Applicant lacks knowledge or information sufficient to form as to the truth of the remaining allegations in numbered paragraph 3 of the Notice of Opposition and therefore denies same.

4. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 4 of the Notice of Opposition and therefore denies the same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 5 of the Notice of Opposition and therefore denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 6 of the Notice of Opposition and therefore denies the same.

7. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph 7 of the Notice of Opposition and therefore denies the same.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Applicant realleges and incorporates by reference its answers to numbered paragraphs 1-12 of the Notice of Opposition.

14. Denied.

15. Denied.
16. Denied.
17. Denied.
18. Denied.

AFFIRMATIVE DEFENSES

1. Opposer's allegation of fame in numbered paragraph 7 of the Notice of Opposition fails to state a claim upon which relief can be granted.
2. Opposer fails to identify the federal trademark registrations that form the basis of its Notice of Opposition in numbered paragraph 3. The Notice of Opposition thus lacks the requisite definiteness for Applicant to form a definitive belief about the allegations therein.
3. Opposer has not and will not suffer any damage from the registration of Applicant's marks opposed in this proceeding.
4. Opposer's marks pled in its Notice of Opposition ("Opposer's Marks") are diluted and therefore weak and entitled to only a narrow scope of protection, if any, because numerous third parties have used, applied to register and registered in the USPTO marks and other designations comprising or incorporating the letters RED, including the use, and application for registration and registration in the USPTO of such marks in connection with goods and/or services commercially related to Opposer's Marks. Accordingly, given the distinct differences in the marks in issue in this proceeding. Opposer's Marks are not entitled to a scope of protection sufficiently broad so as to encompass Applicant's opposed marks.

5. Applicant's opposed marks and Opposer's Marks are so different in sound, appearance, meaning, connotation and commercial impression that their use in connection with Applicant's and Opposer's respective goods and services cannot result in a likelihood of confusion, mistake or deception within the meaning of the Lanham Act, the common law, or any other applicable legal authority.

WHEREFORE, Applicant prays that this Opposition be dismissed, and that the opposed U.S. Trademark Applications Serial Nos. 85/400,933, 85/400,941, 85/400,955 and 85/406,652 be forwarded to allowance.

Respectfully submitted,

MICHAEL F. BALL



Date: December 26, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES has been served by first-class mail, postage prepaid, on counsel for Opposer, as follows, this 26th day of December, 2012 as follows:

Martin R. Greenstein
TechMark a Law Corporation
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Casimir W. Cook II